

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SALVATORE SPINNATO, #272-280, *

Petitioner *

v. * CIVIL ACTION NO. JFM-02-4213

J.P. GALLEY, WARDEN, et al., *

Respondents *

* * * * *

RESPONSE TO MOTIONS TO COMPEL

Respondents, Jon P. Galley, Warden of Western Correctional Institution, and J. Joseph Curran, Jr., the Attorney General of the State of Maryland, by undersigned counsel, hereby respond to the motions to compel filed by Petitioner Salvatore Spinnato on December 13, 2005, and state as follows:

1. By separate motions to compel filed on December 13, 2005, Petitioner Spinnato requested, as best Respondents can discern, that this Court compel Respondents to provide him with the following items:

- A. A motion to dismiss indictment that Spinnato filed in the Circuit Court for Baltimore County on or about November 12, 1997.
- B. A motion to recuse the Honorable Barbara Kerr Howe that Spinnato filed in the Circuit Court for Baltimore County on or about February 3, 1998.
- C. A motion for belated review of sentence that Spinnato filed in the Circuit Court for Baltimore County on or about November 12, 2002.
- D. A motion for a new trial that Spinnato filed in the Circuit Court for Baltimore County on or about January 6, 2003.

- E. A motion for a writ of habeas corpus that Spinnato filed in the Circuit Court for Baltimore County on or about January 27, 2003.
- F. The State of Maryland's response to Spinnato's motion to dismiss, which was filed in the Circuit for Baltimore County on or about November 17, 1997.
- G. Copies of Exhibits A through G to Respondent's Exhibit 28, which is State's Answer to Spinnato's Motion to Reopen Post Conviction Proceedings.
- H. A transcript of the November 27, 1997, hearing at which Spinnato's motion to dismiss was denied.
- I. A copy of the Circuit Court for Baltimore County's August 14, 2002, order denying Spinnato's motion for a new trial.
- J. A copy of Respondents' response to Spinnato's request for an evidentiary hearing.

See Petitioner's Motions to Compel.

Spinnato contends that items A through H are documents that Respondents are compelled to provide this Court under the applicable rules of procedure. He contends that item I, although listed as Respondents' Exhibit 17, is not the order that he and this Court were provided by Respondents as Exhibit 17. He contends that item J was not served on him by Respondents. *See* Petitioner's Motions to Compel.

2. With regard to Item I, Spinnato is correct that Respondents incorrectly provided him and this Court the wrong order as Exhibit 17. While Respondents intended Exhibit 17 to be the Circuit Court for Baltimore County's August 14, 2002, order denying Spinnato's motion for a new trial, Respondents inadvertently provided the Circuit Court for Baltimore County's February 12, 2003, order denying a separate motion for a new trial. Attached to

this response as Exhibit 1 is the Circuit Court for Baltimore County's August 14, 2002, order that should have been provided as Exhibit 17.

3. With regard to Item J, attached as Exhibit 2 to this response is a copy of Respondents' response to Spinnato's request for an evidentiary hearing, which indicates that it was mailed to Petitioner Spinnato on April 30, 2004.

4. With regard to Item H, to date, the November 27, 1997, hearing at which Spinnato's motion to dismiss was denied has not been transcribed.¹

5. With regard to Items A through G, Spinnato contends that Respondents are required to provide these documents under the applicable rules of procedure. *See* Motions to Compel. Respondents do not agree with this assessment. In fact, Respondents believe that they have provided this Court and Petitioner Spinnato with substantially more documentation than required by Habeas Rule 5. *See* Habeas Rule 5 (requiring habeas respondent to provide with the answer relevant portions of transcripts, and certain briefs and orders filed in appellate proceedings relating to petitioner's conviction or sentence or post conviction proceedings). That said, Respondents are in possession of most of the documents specified by Spinnato, and, to facilitate the resolution of the claims raised in Spinnato's current federal habeas petition, Respondents are providing as Exhibits 3 through 8 to this response the documents that they possess that Petitioner Spinnato has requested. Respondents are not in possession of item G, the exhibits accompanying Respondent's Exhibit 28 (the State's

¹The docket entries reflect that the hearing was held on November 24, 1997, not November 27, 1997. The only transcript Respondents possess that has not been provided to this Court is the November 19, 1997, hearing on Spinnato's proposed defense of not criminally responsible.

Answer to Spinnato's Motion to Reopen Post Conviction Proceedings), and therefore, those documents are not being provided.

6. Respondents will provide additional exhibits as directed by this Court.

Respectfully submitted,

_____/s/_____
EDWARD J. KELLEY
Assistant Attorney General
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Counsel for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of January, 2006, a copy of the foregoing Response to Motions to Compel (with exhibits), which was electronically filed on January 13, 2006, was mailed, first class, postage prepaid, to Salvatore Spinnato #272-280, Western Correctional Institution, 13800 McMullen Highway, Cumberland, Maryland 21502.

_____/s/_____
EDWARD J. KELLEY
Assistant Attorney General